89-718 (1)

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

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IN THE
SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1989

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DAVID EDWARD MARTEL,
Petitioner,

vs.

LIONEL TALBOT, ET AL.,
Respondents.

==========

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

==========

Respectfully submitted by,

(MR.) DAVID E. MARTEL, PRO-SE
134 Hall Street, Dock E
Post Office Box 2349
Concord, New Hampshire
03302-2349
Phone: NO phone

Dated:
October 30, 1989

14 pp

QUESTION PRESENTED

IF THE MERRIMACK COUNTY (NH) SUPERIOR COURT VACATES ITS JUDGEMENTS IN "STATE V. MARTEL;" 83-S-085-M; 83-S-086-M; AND 83-S-087-M; WILL THAT SERVE AS 'RES JUDICATA' IN THIS PRESENT ACTION?

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DOCKET NO.:

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IN THE
SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1989

==========

DAVID EDWARD MARTEL;
Petitioner;

vs.

LIONEL J. TALBOT; AS AN INDIVIDUAL;
AND IN HIS CAPACITY AS A POLICE OFFICER
OF THE CITY OF CONCORD (NH);

MICHAEL A. GRIDLEY; AS AN INDIVIDUAL;
AND IN HIS CAPACITY AS A POLICE OFFICER
OF THE CITY OF CONCORD (NH);

GLEN W. SCHADLICK; AS AN INDIVIDUAL;

JOHN DOE; AS AN INDIVIDUAL;

THE CITY OF CONCORD, NEW HAMPSHIRE;

THE CONCORD (NH) POLICE DEPARTMENT;

DAVID G. WALCHAK; AS AN INDIVIDUAL;
AND IN HIS CAPACITY AS POLICE CHIEF
OF THE CITY OF CONCORD (NH);

LEO F. DEGREENIA, JR.; AS AN INDIVIDUAL;
AND IN HIS CAPACITY
AS A POLICE BUREAU DIRECTOR
OF THE CITY OF CONCORD (NH);

JAMES J. MCGONIGLE; AS AN INDIVIDUAL;
AND IN HIS CAPACITY AS A POLICE COMMANDER
OF THE CITY OF CONCORD (NH);

HIS EXCELLENCY, JOHN HENRY SUNUNU;
AS AN INDIVIDUAL;
AND IN HIS CAPACITY AS GOVERNOR
OF THE STATE OF NEW HAMPSHIRE;

THE STATE OF NEW HAMPSHIRE;

JAMES B. SCHADLICK, SR.; AS AN INDIVIDUAL;

JANET E. SCHADLICK; AS AN INDIVIDUAL;

ELLET L. SEAVEY; AS AN INDIVIDUAL;

SEAVEY MOTORS;

EDWARD R. STROPLE; AS AN INDIVIDUAL; AND

JANE V. STROPLE; AS AN INDIVIDUAL;

AND

THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT;

LEVIN H. CAMPBELL; CHIEF JUDGE;

HUGH H. BOWNES; CIRCUIT JUDGE;

STEPHEN BREYER; CIRCUIT JUDGE;

JUAN TORRUELLA; CIRCUIT JUDGE; AND

BRUCE SELYA; CIRCUIT JUDGE;

Respondents.

==========

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INTRODUCTION

David E. Martel (the "Petitioner") hereby respectfully petitions this Honorable Court that a Writ of Certiorari issue to review the denial of the Petitioner's Petition for Rehearing and Suggestion for Rehearing In Banc (and Petitioner's Motion for Judicial Notice) by the United States Court of Appeals for the First Circuit entered on September 29, 1989 and to review the Judgement and Opinion of the United States Court of Appeals for the First Circuit entered on July 13, 1989.

OPINIONS BELOW

On September 29, 1989 the United States Court of Appeals for the First Circuit denied a Petition for Rehearing and a Suggestion for Rehearing In Banc (as well as denying a Motion for Judicial

Notice) in "David Edward Martel v. Lionel Talbot, et al.," Case Number 88-2153 [See Appendix B for Order; see Appendix C for Motion]. The Petition and the Motion had been entered on July 27, 1989. There was NO opinion.

On July 13, 1989 the United States Court of Appeals for the First Circuit (Campbell, CJ, Bownes and Breyer, JJ) entered an opinion and judgement in "Martel v. Talbot, et al.," 88-2153 [See Appendix A]. The Notice of Appeal was entered in the United States District Court for the District of New Hampshire on October 6, 1988. The Opinion of the United States Court of Appeals for the First Circuit was unpublished and unreported and is included in the Appendix in the back as Appendix "A" [A-1-A-15, Appendix pages 1-15].

On September 6, 1988 the Petitioner's Motion for Reconsideration in the district court below was denied by the United States

District Court for the District of New Hampshire (Shane Devine, CJ) [See Appendix D]. There was NO opinion. The Motion for Reconsideration was entered on August 25, 1987 [See Appendix H].

On August 18, 1987 the Final Judgement was issued in the case in the district court [See Appendix E]. There was NO opinion. The case, "David Edward Martel v. Lionel Talbot, et al.," C-83-464-D, United States District Court for the District of New Hampshire was filed on August 3, 1983.

SPECIAL FACTS

This action is a collateral attack on the previous judgements mentioned. The Petitioner was unaware of this until after the United States Court of Appeals had denied the Petitioner's Petition for Rehearing and Suggestion for Rehearing In Banc (and Motion for Judicial Notice). The Petitioner will be making a direct attack.

THE NATURE OF THIS ACTION

This action is basically a civil rights action taken under 42 U.S.C. §§ 1983, 1985(2), 1985(3), and 1986. It is a counterclaim to the previous actions. It is also necessary so that the state, the city, and all of the respondents, indeed, all of the people of the State of New Hampshire, can change their testimony and now admit that they know David E. Martel, the Petitioner. Without it, the state, the city, and all of the respondents, indeed, all of the people of the State of New Hampshire CANNOT change their testimony. Without the direct attack in the Merrimack County (NH) Superior Court on the previous judgements mentioned the Petitioner is forever barred from and unable to litigate his case and have his day in court. To have a full and fair hearing. With the direct attack in the Merrimack County (NH) Superior Court and the counter-

claims here the city, the state, and all of the respondents can pay the petitioner for their previous damage to him and then change their testimony.

JURISDICTION

The denial of the Petition for Rehearing and Suggestion for Rehearing In Banc (and the denial of the Motion for Judicial Notice) by the United States Court of Appeals for the First Circuit sought to be reviewed was entered on September 29, 1989 and this Petition for a Writ of Certiorari is filed within ninety days of that date. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in

the land and naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use; without just compensation.

United States Constitution, amendment XIV, § 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition

the government for a redress of grievances.

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985(2):

> (2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in

his person or property on accout of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with the intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C. § 1985(3):

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully

qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if

> the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

THE FACTS
(STATEMENT OF THE CASE)

On or about October 20, 1973 David E. Martel, the Petitioner, made the statement that, "The President should be impeached!"

On or about October 20, 1973 to on or about August 9, 1974 this statement led to over 7,000,000 (seven million) cards, letters, telegrams, etc. demanding the impeachment of President Richard M. Nixon.

On or about February 6, 1975 David E. Martel, the Petitioner, founded the World Federalist Party.

On or about March 31, 1977 David E. Martel, the Petitioner, established the World Federalist Party International Committee and Fund.

On or about March 10, 1981 Lionel J. Talbot, a Concord (NH) Police officer, and Ellet L. Seavey, a civilian working with him, brought a charge of Having a Defective Muffler, a Violation, against David E. Martel, the Petitioner here.

On or about August 3, 1981 Leo F. DeGreenia, Jr., a Concord (NH) Police Bureau Director, and Edward R. Strople and Jane V. Strople, both civilians working with him, brought a charge of Failure to Report Injury to a Dog, a Violation, against David E. Martel, the Petitioner here.

On or about August 3, 1981 Lionel J. Talbot, Michael A. Gridley, Leo F. DeGreenia, Jr., James J. McGonigle, and David G. Walchak, all Concord (NH) Police

officers, and Glen W. Schadlick and a John Doe, both civilians working with the above police officers, brought the charges of Assault, a Misdemeanor, Resisting Arrest or Detention, a Misdemeanor, Speeding, a Violation, and Disobeying a Police Officer, a Violation, against David E. Martel, the Petitioner here.

On or about September 8, 1981, the charge of Failure to Report Injury to a Dog, a Violation, was nol-prossed by the State of New Hampshire.

On or about December 8, 1981 Lionel J. Talbot, a Concord (NH) Police officer, made the statement in a written interrogatory in open court: "I know David E. Martel only through the two contacts which I had with him which are the basis of the pending criminal charges. Other than this I have no knowledge of Mr. Martel whatever."

On or about December 8, 1981 Michael A. Gridley, a Concord (NH) Police officer, made the statement in a written interrogatory in open court: "I know David E. Martel only through the two contacts which I had with him which are the basis of the pending criminal charges. Other than this I have no knowledge of Mr. Martel whatever."

On or about May 21, 1982 the charges of Speeding, Disobeying a Police Officer, Resisting Arrest or Detention, Assault, and Having a Defective Muffler were nolprossed by the State of New Hampshire.

On or about November 24, 1982 Ellen Shaw and Richard P. Bertolami, both Concord (NH) Police officers, and Esther M. Crowley, a civilian who was working with them, as well as a group of other people, both police and civilian, working together with the above named police officers, brought charges of Criminal Tres-

pass, Criminal Threatening, and Resisting Detention, all Misdemeanors, against David E. Martel, the Petitioner here, with the Concord (NH) District Court.

On or about February 14, 1983 the charges were transferred to the Merrimack County (NH) Superior Court.

On or about February 14, 1983 the charge of Criminal Trespass, a Misdemeanor, became 83-S-085-M, Merrimack County (NH) Superior Court.

On or about February 14, 1983 the charge of Criminal Threatening, a Misdemeanor, became 83-S-086-M, Merrimack County (NH) Superior Court.

On or about February 14, 1983 the charge of Resisting Detention, a Misdemeanor, became 83-S-087-M, Merrimack County (NH) Superior Court.

On or about May 16, 1983, in open court, the Merrimack County (NH) Superior Court, Ellen Shaw and Richard P. Bertolami,

both Concord (NH) Police officers, and Esther M. Crowley, a civilian who was a willfull participant with the above-named police officers in the above named actions, DENIED that they knew who David E. Martel was, DENIED that David E. Martel was well known, and DENIED that David E. Martel was well known for political reasons.

On or about May 16, 1983 David E. Martel, the Petitioner here (and the Defendant there), was found guilty of Criminal Trespass, Criminal Threatening, and of Resisting Arrest or Detention in the Merrimack County (NH) Superior Court and was sentenced to jail in the Merrimack County (NH) House of Corrections.

On or about August 3, 1983 David E. Martel, the Petitioner, brought this present action with the United States District Court for the District of New Hampshire against the original police

officers and civilians who brought the charges and made the denials in the six cases that were nol-prossed.

On or about August 18, 1987 a Final Order and Judgement was issued by the United States District Court for the District of New Hampshire in the case, "David Edward Martel v. Lionel Talbot, et al.," C-83-464-D.

On or about August 25, 1987 the Petitioner entered a Motion for Reconsideration with the court.

On or about September 6, 1988 an Order denying the Petitioner's Motion for Reconsideration was entered with the district court.

On or about October 6, 1988 the Petitioner entered a Notice of Appeal with the district court.

On or about July 13, 1989 a Final Order and Judgement was entered in the United States Court of Appeals for the

First Circuit in "David Edward Martel v. Lionel Talbot, et al.," 88-2153.

On or about July 27, 1989 the Petitioner entered a Petition for Rehearing and Suggestion for Rehearing In Banc along with a Motion for Judicial Notice.

On or about September 29, 1989 the circuit court entered an order denying the petition. And the motion.

THE QUESTION

IF THE MERRIMACK COUNTY (NH) SUPERIOR COURT VACATES ITS JUDGEMENTS IN "STATE V. MARTEL;" 83-S-085-M; 83-S-086-M; AND 83-S-087-M; WILL THAT SERVE AS 'RES JUDICATA' IN THIS PRESENT ACTION?

THE LAW

(ARGUMENT OF THE CASE)

The answer to the above question is "YES!"

There are three reasons why.

One is because of the doctrine of estoppel. This according to "Sanderson v. Balfour," 109 N.H. 213 at 216 and 247 A.2d 185 at 187 (1968) which states:

> "The absence of mutuality may not be used to permit the plaintiff in this case to maintain his action. The decisions in this state, in the final

> analysis, have always turned on whether there had been a full and fair opportunity to the party estopped to litigate the issue barring him and where there had not been he was afforded relief even though the parties were the same. "Perry v. Faulkner," 98 N.H. 474. Where the issues were not the same the fact that the parties were the same has been considered immaterial. "Lovejoy v. Ashworth," 94 N.H. 8; "Laconia Nat. Bank v. Lavallee," 96 N.H. 353; "Ainsworth v. Claremont," 108 N.H. 55."

The defendant in this action has NOT had a full and fair opportunity to litigate whether or not these actions or the previous actions were brought for political reasons.

And this is a federal right.

This according to this Honorable Court in "Ashe v. Swenson," 397 U.S. 436 at 442 and 443 (1970):

> "The doctrine of "Benton v. Maryland," 395 U.S. 784, puts the issues in the present case in a perspective quite different from that in which the issues were perceived in "Hoag v. New Jersey," supra.

> The question is no longer whether collateral estoppel is a requirement of due process, but whether it is a part of the Fifth Amendment's guarantee against double jeopardy. And if collateral estoppel is embodied in that guarantee, then its applicability in a particular case is no longer left for state court determination within the broad bounds of "fundamental fairness," but a matter of constitutional fact we must decide through an examination of the entire record. Cf. "New York Times Co. v. Sullivan," 376 U.S. 254, 285; "Niemotko v. Maryland," 340 U.S. 268, 271; "Watts v. Indiana," 338 U.S. 49, 51; "Chambers v. Florida," 309 U.S. 227, 229; "Norris v. Alabama," 294 U.S. 587, 590."

The second reason why the answer to the above question is "YES!" is because the previous proceedings were based on fraud an perjury based on the previous denials. This according to "Napue v. Illinois," 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) which states:

> " ... it is established that a conviction obtained through the use of false evi-

> dence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. Mooney v. Holohan, 294 U.S. 103; Pyle v. Kansas, 317 U.S. 213; Curran v. Delaware, 259 F.2d 707. See New York ex rel Whitman v. Wilson, 318 U.S. 688, and White v. Ragen, 325 U.S. 760. Compare Jones v. Commonwealth, 97 F.2d 805, 809. Cf. Mesarosh v. United States, 325 U.S. 1. The same result obtains when the State, although not soliciting false evidence allows it to go uncorrected when it appears. Alcorta v. Texas, 335 U.S. 28; United States ex rel Thompson v. Dye, 221 F.2d 763; United States ex rel Almeida v. Baldi, 195 F.2d 815; United States ex rel Montgomery v. Ragen, 86 F.Supp. 382. See generally annotation, 2 L.Ed.2d 1575."

The third reason why the answer to the above question is "YES!" is because NOT to do so would violate the Petitioner's First Amendment right to the freedom of speech and association.

This also according to this Honorable Court in "Perry v. Sindermann," 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed. 570

(1972). The court's decision had to do with governmental benefits but it could just as well have dealt with rights (the decision is right on line), particularly with the rights above:

> "For at least a quarter-century, this court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests --- especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which (it) could not command directly." Speiser v. Randall, 357 U.S. 513, 526. Such interference with constitutional rights is impermissible."

WHY YOU SHOULD ACCEPT THIS PETITION

You should accept this Petition because acceptance of this Petition would protect both the Petitioner and the State; as well as all of the other Respondents; in that any future adjudications would be based on the truth of the situation and on valid law. It would also protect the democratic nature of our society and protect the integrity of our court system.

In this age when government an everyone is complaining about "terrorism" and the violent means of political expression it is surprising to find the court system taking the attitude that it is toward one who only wishes to express his political views peacefully and democratically.

One wonders why.

Indeed, this case comes down to whether the Petitioner will be allowed to express his political views peacefully and democratically. Or violently and undemocratically. Or not at all.

At least in this country.

And whether this court, this government, and this country mean what they say in their Constitution and laws; free speech, due process, NO double jeopardy; and all; or whether they are all just a bunch of hypocrites.

CONCLUSION

For all of the reasons listed above, this Honorable Court should issue a Writ of Certiorari to review the denial of the Petitioner's Petition for Rehearing and Suggestion for Rehearing In Banc (and the denial of the Petitioner's Motion for Judicial Notice) by the United States Court of Appeals for the First Circuit entered on September 29, 1989 and to review the Judgement and Opinion of the United States Court of Appeals for the First Circuit entered on July 13, 1989.

Respectfully submitted,

David E. Martel

(MR.) DAVID E. MARTEL, PRO-SE
134 Hall Street, Dock E
Post Office Box 2349
Concord, New Hampshire
03302-2349
Phone: NO phone

Dated:
October 30, 1989

IN THE
SUPREME COURT OF THE UNITED STATES

PROOF OF SERVICE

STATE OF NEW HAMPSHIRE)
) SS.:
COUNTY OF MERRIMACK)

I, David E. Martel, do hereby depose and say:

That I am the Petitioner in the above-entitled action, pro-se.

And further do I depose and say that on the 31st day of October 1989 I forwarded three copies of this Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit to each of the persons listed below by mailing it to them first class mail, postage prepaid, at the United States Post Office at Concord, New Hampshire:

1) Paul F. Cavanaugh, Esquire
Concord City Solicitor
City Hall
41 Green Street
Concord, New Hampshire 03301
Counsel for the City of Concord
& for the police officers

2) Michael Lenehan, Esquire
Ransmeier & Spellman
One Capitol Street
Post Office Box 1378
Concord, New Hampshire 03302-1378
Counsel for the City of Concord
& for the police officers

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3) Diane L. Perin, Esquire
Ransmeier & Spellman
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Post Office Box 1378
Concord, New Hampshire 03302-1378
Counsel for the City of Concord
& for the police officers

4) The Honorable John Arnold
The Attorney General
State House Annex
Concord, New Hampshire 03301-6397
Counsel for the State of New
Hampshire & for John Sununu

5) Charles T. Putnam, Esquire
Assistant Attorney General
State House Annex
Concord, New Hampshire 03301-6397
Counsel for the State of New
Hampshire & for John Sununu

6) I. Michael Winograd, Esquire
112 South State Street
Concord, New Hampshire 03301
Counsel for Janet, James
& Glen Schadlick

7) Merrick C. Weinstein, Esquire
Wadleigh, Starr, Peters, Dunn &
Chiesa
95 Market Street
Manchester, New Hampshire 03101
Counsel for Ellet L. Seavey
& Seavey Motors

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8) William E. Strickland, Jr., Esquire
Wadleigh, Starr, Peters, Dunn & Chiesa
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Manchester, New Hampshire 03101
Counsel for Ellet L. Seavey & Seavey Motors

9) Mr. Edward R. Strople
7 Longmeadow Drive
Concord, New Hampshire 03301
PRO-SE

10) Mrs. Jane V. Strople
6 Overlook Trail
Concord, New Hampshire 03301
PRO-SE

I, David E. Martel, do affirm and say that the above is true and correct under the pain and penalty of perjury, the punishment for which is a fine or imprisonment or both.

David E. Martel

(Mr.) David E. Martel
134 Hall Street, Dock E
Post Office Box 2349
Concord, New Hampshire
03302-2349
Phone: NO phone
PETITIONER,
PRO-SE

Proof of Service, Page 4

Subscribed and affirmed to before me this thirty-first day of October, A.D. 1989, at the City/Town of Concord, County of Merrimack, and the State of New Hampshire.

Arline M. Lutter

ARLINE M. [illegible]
My Commission Expires March [illegible]

A P P E N D I X E S

APPENDIX "A"

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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No. 88-2153

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DAVID EDWARD MARTEL,
Plaintiff, Appellant,

v.

LIONEL TALBOT, ETC., ET AL,
Defendants, Appellees.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Shane Devine, U.S. District Judge]

==========

Before

Campbell, Chief Judge,

Bownes and Breyer, Circuit Judges.

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David E. Martel on brief, pro-se.
Diane L. Perin and Ransmeier & Spellman on brief for appellees Lionel Talbot, Michael A. Gridley, Leo F. DeGreenia, Jr.,

James McGonigle, David G. Walchak, and the City of Concord.

Merrick C. Weinstein and Wadleigh, Starr, Peters, Dunn & Chiesa on brief for appellee Ellet L. Seavey.

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July 13, 1989

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Per Curiam. The plaintiff, David E. Martel, a New Hampshire resident, filed a complaint against federal, state and municipal governments, authorities and private individuals. Certain counts were dismissed and plaintiff then filed an eleven count complaint naming thirty-four defendants. The district court entered several orders over the course of a year or more granting motions to dismiss and summary judgement in favor of certain defendants. This appeal is from all orders. For clarity we will discuss the various defendants separately.

I. City of Concord Defendants.

The plaintiff brought malicious prosecution claims against the City of Concord, New Hampshire and various police officers ("city defendants") in connection with various criminal charges.[1] The district court dismissed certain of the malicious prosecution counts (2, 5, 6, 7 and 8) on the ground that the underlying criminal charges were instituted on probable cause. The court relied on the fact that Martel was convicted in Concord District Court on these charges. Martel does not dispute the fact that he was convicted in the trial court nor did he challenge those convictions below, but contends that the prosecution's decision to enter nolle pro-

1. He was charged with having a defective muffler, simple assault, disobeying a police officer and speeding. He was found guilty on all charges. He appealed. The prosecution entered "Nolle Prosequi" on the appeal.

sequi after he appealed demonstrates lack of probable cause. We disagree.

Under New Hampshire law "[t]o succeed in an action for malicious prosecution 'the plaintiff must prove that he was subject to a criminal prosecution instituted by the defendant without probable cause and with malice, and that the criminal proceedings terminated in his favor,' (citations omitted)." Stock v. Byers, 424 A.2d 1122 (1980). The only fact alleged by Martel is that the prosecution nol-prossed the appeal taken by Martel from his convictions. The fact that the prosecution after succeeding in obtaining convictions at trial decided not to prusue the appeals is not evidence of lack of probable cause. New Hampshire law recognizes that "the mere failure of a prosecution" does not support a finding of lack of probable cause. Cohen v. Saidel, 71 N.H. 558 at 564, 53 A. 800 (1902). Similarly, the

abandonment of a criminal proceeding by a prosecution witness is not evidence of lack of probable cause. Stock, 424 A.2d at 1124 (fact that arresting officer nol-prossed criminal action is not evidence of lack of probable cause). Here, appellant was tried and convicted on all the charges. The subsequent nolle prosequi of the appeal of the convictions does not show that the prosecution lack an "honest belief" or "strong suspicion" that Martel was guilty at the time the prosecution began. Id. at 1123. Rather, criminal conviction is evidence of the existence of probable cause. See Brewster v. Woodward & Lothrop, 530 F.2d 1018 (D.C. Cir. 1976) (a criminal conviction established the existence of probable cause to arrest and prosecute). In support of his claim, Martel only alleges the appeals were nol-prossed. This allegation alone does not support a claim that the defendants lacked probable cause

to prosecute when the record shows Martel was convicted on the charges. Therefore, we find the claims of malicious prosecution in Counts 2, 5, 6, 7 and 8 were properly dismissed.

The district court directed the City defendants to answer three counts of the complaint. The three counts of the complaint alleged (1) Malicious prosecution in connection with a charge of failure to report injury to a dog, (2) assault by police officers, and (3) violation of civil rights. The City defendants filed a motion for summary judgement on these counts. On March 14, 1986, two days after the period provided for by Local Rule 11 for filing a response to a summary judgement motion, plaintiff filed a motion to extend time to file objections to April 14, 1986. The magistrate denied the motion on March 26, 1986. Plaintiff filed an objection to the magistrate's order in the district court.

On April 7, 1986, the City defendants' summary judgement motion was granted by entry of a notation stating the motion was granted pursuant to Local Rule 11. On April 14, 1986, plaintiff filed his objections to the City defendants' motion plus a motion to reconsider the grant of summary judgement. On August 17, 1987, the district court denied the motion and entered judgement.

On Appeal, plaintiff challenges entry of summary judgement pursuant to Local Rule 11. This court recently considered and rejected a similar challenge in Jaroma v. Massey, No. 88-1629, (1st Cir. Apr 28, 1989). In Jaroma, we stated that Local Rule 11 "means that the opposing party, by failing to file a written objection and memorandum as required by the rule, waives the right to controvert the facts asserted by the moving party. ... " Id. at 8. The court will accept as true all material

facts set out by the moving party "with appropriate record support" and summary judgement will be granted if "those facts entitle the moving party to summary judgement as a matter of law." Id. at 8. Here there is no dispute that plaintiff did not submit a timely written objection and memorandum. Two days after the time for tiling passed, he filed a motion for extension of time. Plaintiff makes the unsupported assertion that "someone" in "the clerk's office gave him incorrect information that his response was due two days later. Throughout this litigation, plaintiff has demonstrated a knowledge of the court rules and procedures. His unsupported claim that he relied on erroneous information does not excuse his failure to comply with Rule 11.

As we made clear in Jaroma, Martel's failure to file a response does not mandate automatic entry of judgement for the moving

party. The court must first examine the moving party's papers to determine if, on the basis of the record before the court, the facts entitle the moving party to summary judgement as a matter of law. Id. It is unclear whether the district court here made such examination, but upon our review of the evidence submitted by the City defendants in support of their motion, we conclude there are no material factual issues and they are entitled to judgement as a matter of law. Although the district court did not make this finding we may affirm on any basis supported by the record. Id. at 10-11.

The City defendants submitted evidence that the dog injury charge was nolle prossed by the complainant. As we previously stated, abandonment of a claim by a prosecution witness does not demonstrate lack of probable cause for purposes of a malicious prosecution claim. Stock v. Byers,

424 A.2d 1122, 1124 (1980). As to Martel's claim that the City police officers assaulted him, the uncontradicted affidavit of Lionel Talbot establishes that the City police officers attempted to question Martel, that Martel swung at the officers and punched one in the jaw and he violently resisted arrest and had to be restrained. The uncontroverted facts, plus the conviction of Martel for assaulting a police officer, demonstrate that the City defendants used reasonable force in connection with the arrest. We conclude the district court did not err in granting summary judgement on the assault claim.

Plaintiff also alleged that the City defendants engaged in a conspiracy of harassment and intimidation against him by their acts of malicious prosecution and assault, thereby violating his civil rights. Martel did not allege any facts

to support this claim or contradict the City defendants' evidence. The district court properly found in favor of the City defendants.

Plaintiff also contends the district court should have granted his motion for reconsideration because it presented "new evidence" that the defendants committed perjury and fraud. In fact, the "new" evidence is nothing more than a restatement of allegations contained in his earlier complaints which the district court had previously examined and dismissed. We do not find that the district court abused its discretion in denying reconsideration under these circumstances.

II. Ellet Seavey, Seavey Motors.

At the outset, we note that plaintiff failed to file timely objections to the magistrate's March 24, 1985 order dismissing counts against Seavey, the State defendants and certain individuals. We re-

iterate our position that objections to a magistrate's report must be made within ten days of the report in order to raise objections on appeal. Scott v. Schweiker, 702 F.2d 13 (1st Cir. 1983); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980). However, plaintiff did file two motions to reconsider the judgement dismissing certain claims pursuant to the magistrate's March 24 order. The motions were denied. Motions for reconsideration are reviewable for abuse of discretion and therefore we shall review Martel's objections. Plaintiff claims Ellet Seavey and Seavey Motors ("Seavey") sabotaged his car's muffler while repairing and inspecting it, leading to his being charged with driving with a defective muffler. He contends that Seavey "conspired with other defendants," all unnamed, to deprive him of his civil rights. The district court dismissed these claims, finding

they failed to allege any specifics of the conspiracy. In order to allege a claim under § 1983, a plaintiff must at least allege "who did what to whom and shy." Dewey v. University of New Hampshire, 694 F.2d 1, 3 (1st Cir. 1982). These specifics to a conspiracy to deprive Martel of his civil rights are completely lacking in the claims against Seavey, except for the bald assertion that Seavey acted as part of some vague governmental conspiracy. We find that the district court properly dismissed the claims against Seavey.[2]

III. State of New Hampshire Defendants.

Plaintiff named the State of New Hampshire and former Governor John Sununu ("Sununu") as defendants.

2. Insofar as Martel seeks to allege a breach of contract claim against Seavey for inadequate repair of his muffler, he has failed to allege any basis for federal jurisdiction.

It appears his claim against the State is that various charges were brought against him in the named of the state and this fact supports a § 1983 claim. The district court granted the State of New Hampshire's motion to dismiss for failure to state a claim because states are not "persons" within the meaning of § 1983 and are not liable under that statute. Aubuchon v. State of Missouri, 631 F.2d 581 (8th Cir. 1980). We agree.

As to Sununu, the district court dismissed for failure to state a claim. The allegations against Sununu fail to specify any action taken by Sununu to deprive plaintiff of his civil rights. Except for the conclusory claim that the Governor was part of an uncpecified conspiracy, there are no allegations concerning specific acts by Sununu against this plaintiff. Such conclusory allegations fall far short of this court's requirements for a civil

rights claim.

Plaintifff has raised various other objections to the dismissal of individual defendants for lack of jurisdiction. We have carefully reviewed plaintiff's arguments and find them without merit.

Affirmed.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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No. 88-2153

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DAVID EDWARD MARTEL,
Plaintiff, Appellant,

v.

LIONEL TALBOT, ETC., ET AL.,
Defendants, Appellees.

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Before

Campbell, Chief Judge,
Bownes, Breyer, Torruella and Selya,
Circuit Judges.

ORDER OF COURT

Entered September 29, 1989

Appellant's motion for judicial notice, petition for rehearing and suggestion for rehearing en banc are denied.

By the Court:

FRANCIS P. SCIGLIANO,
Clerk

By: /s/ Daniel F. Loughry
Chief Deputy Clerk

[cc: Messrs: Martel, Weinstein
and Ms Perin]

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 88-2153

David Edward Martel,
Plaintiff-Appellant,

v. HEARING REQUESTED

Lionel Talbot, et al.,
Defendants-Appellees.

PLAINTIFF-APPELLANT'S
MOTION FOR JUDICIAL NOTICE

NOW COMES David Edward Martel, 134 Hall Street, Post Office Box 2349, Concord, Merrimack County, New Hampshire, the plaintiff-appellant in the above-entitled and numbered action, pro-se, and respectfully moves for judicial notice of the following facts:

1) The fact that on or about October 20, 1973 the Plaintiff-Appellant, David Edward Martel, made the statement that, "The President should be impeached!"

2) The fact that this statement led to over 7,000,000 (seven million) cards, let-

ters, telegrams, etc. demanding the impeachment of President Richard M. Nixon.

3) The fact that the Plaintiff-Appellant, David Edward Martel, is well known. And

4) The fact that the Plaintiff-Appellant, David Edward Martel, is well known for political reasons.

AS REASONS THEREFORE, the Plaintiff-Appellant, DAvid Edward Martel, respectfully gives the following reasons:

1) That to do otherwise would constitute fraud on the part of this Honorable Court.

2) That the above four facts are true and correct and can be easily ascertained by this court or by anyone else.

3) That the above facts are relevant, material, and competent to any and all litigation that may come before this and any and all other courts.

4) That the proper working of the doctrine of estoppel demands that the court

take judicial notice of the above four facts.

5) That the proper working of a democratic society demands that the court take judicial notice of the above four facts.

WHEREFORE, the Plaintiff-Appellant, David Edward Martel, respectfully requests of this Honorable Court:

1) That this Honorable Court hold a hearing on this motion;

2) That after said hearing this Honorable Court take judicial notice of the above four facts;

3) That after taking judicial notice of the above four facts this Honorable Court dispense with this case and the other issues in this case by granting the plaintiff the relief prayed for in the Plaintiff-Appellant's Petition for Rehearing and Suggestion for Rehearing In Banc; and

4) That this Honorable Court grant such other and further relief as this Honorable

Court deems just and proper.

Respectfully Submitted By,

Dated:
July 26, 1989

(MR.) /s/ David E. Martel
DAVID E. MARTEL, PRO-SE
Chairman and Treasurer
World Federalist Party
World Headquarters
International Committee and Fund
134 Hall Street
Post Office Box 2349
Concord, New Hampshire
03302-2349
Phone: NO phone

Certificate of Service

I hereby certify that I have this date forwarded one copy of this Plaintiff-Appellant's Motion for Judicial Notice to each of the following persons either by mailing it to them first class mail, postage prepaid, or by hand delivering it to them:

1) Paul F. Cavanaugh, Esquire;
2) Michael Lenehan, Esquire;
3) Charles T. Putnam, Esquire;
4) I. Michael Winograd, Esquire;
5) Merrick C. Weinstein, Esquire;
6) Mr. Edward R. Strople; and
7) Mrs. Jane V. Strople.

Dated:
July 26, 1989

(Mr.) /s/ David E. Martel
David E. Martel
134 Hall Street

Post Office Box 2349
Concord, New Hampshire
03302-2349
Phone: NO phone

APPENDIX "D"

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW HAMPSHIRE

DAVID EDWARD MARTEL, Plaintiff;	)	
v.	)	C-83-464-D
LIONEL J. TALBOT, ET AL., Defendants.	)	

MOTION TO RECONSIDER
WITH/AFFIDAVIT

filed: August 25 2:25 PM 1987

entered on motion:

8/31/88 Motion denied
Shane Devine, USDC

9-6-88 dae
Copy to counsel
with order thereon

Counsel of record

APPENDIX "E"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

David Edward Martel — JUDGEMENT IN A CIVIL CASE

v.

Lionel Talbot, et al. — Case Number: C-83-464-D

(X) Decision by Court. This action came for consideration before the court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED.

Judgement is entered in accordance with the following:

1. On April 7, 1986, Defendants' Motion for Summary Judgement was granted pursuant to Local Rule 11.

2. On August 16, 1987, Chief Judge Shane Devine issued an order directing the clerk to enter judgement.

cc: Mr. David E. Martel
Paul F. Cavanaugh, Esq.
dae Michael Lenehan, Esq.
Edward R. and Jane V. Strople
Theodore Wadleigh, Esq.

August 18, 1987
Date

James R. Starr
Clerk

/s/ Deborah A. Eastman
(By) Deputy Clerk
Deborah A. Eastman

APPENDIX "F"

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW HAMPSHIRE

David Edward Martel

v. Civil No. 83-464-D

Lionel Talbot, et al

O R D E R

There are numerous pending motions in this civil rights action, most of which are moot because all of the original eighteen defendants have been previously dismissed or have had summary judgement granted in their favor by orders of the Court. Thus, the Court finds plaintiff's motion for summary judgement (document no. 120), plaintiff's motion to recuse (document no. 119), and plaintiff's motion for judicial notice (document no. 114) to be moot. Plaintiff's motion to overrule or reconsider the Report, Recommendation, and Order of the Magistrate dated March 24, 1986 (document no. 108) and plaintiff's

motion to vacate judgement (document no. 115) are herewith denied. The Clerk is accordingly directed to enter judgement herein.

Plaintiff previously filed a notice of appeal on May 7, 1986, which was not acted upon as judgement had not yet been entered. Plaintiff need not file a new notice of appeal unless in light of the instant order he wishes to raise additional grounds for his appeal. However, in any case, plaintiff must submit a new financial declaration if he wishes to proceed in forma pauperis on this appeal.

SO ORDERED.

/s/ Shane Devine
Chief Judge
United States District Court

August 16, 1987

cc: Mr. David E. Martel
Paul F. Cavanaugh, Esq.
Michael Lenehan, Esq.
Edward R. and Jane V. Strople
Theodore Wadleigh, Esq.
AG

APPENDIX "G"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

David Edward Martel

v. Civil No. 83-464-D

Lionel Talbot, et al.

ORDER

Plaintiff commenced this civil rights action pursuant to 42 U.S.C. § 1983 on August 3, 1983. The subject matter is presently before the Court upon plaintiff's motion for leave to file late objection to the Report, Recommendation and Order of the Magistrate of March 20, 1985, and motion for leave to file late motion to overrule the Magistrate. (#99). Additionally, plaintiff has filed a motion to expand the time for filing objection and counter-affidavit(s) to motion for summary judgement by thirty-two (32) days to April 14, 1986.

Rule 11 of the United States District Court for the District of New Hampshire provides that parties have ten days in which to file a timely objection to an opposing party's motion, after which any objection is waived. With respect to plaintiff's requested expansion of time to object to defendants' summary judgement motion, plaintiff's motion was filed two days outside the allowable period and therefore untimely filed. Moreover, plaintiff offers no reason for this delay that falls within the scope of "excusable neglect" as stated in Rule 6(b), Fed. R. Civ. P.

Plaintiff's objection to the Report, Recommendation and Order dated March 20, 1985, was previously reviewed by the Court and denied on April 26, 1985. In any event, plaintiff's motion is untimely filed since a party must object to a Magistrate's report within ten days of

receipt of the proposed findings and recommendations or review is barred. 28 U.S.C. § 636(b)(1); Scott v. Sweiker, 702 F.2d 13, 14 (1st Cir. 1983).

Therefore, it is ORDERED that:

1. plaintiff's motion to expand the time for filing objection and counter-affidavit(s) to motion for summary judgement by thirty-two (32) days to April 14, 1986, is denied (#98); and

2. plaintiff's motion for leave to file late objection to the Report, Recommendation and Order of the Magistrate of March 20, 1985, and motion for leave to file late motion to overrule the Magistrate is denied (#99).

/s/ William H. Barry, Jr.
United States Magistrate

March 24, 1986

cc: David Edward Martel
Paul F. Cavanaugh, Esq
Michael Lenehan, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

DAVID EDWARD MARTEL, Plaintiff;	)	
v.	)	C-83-464-D
LIONEL J. TALBOT, ET AL., Defendants.	)	

MOTION TO RECONSIDER

NOW COMES David Edward Martel, the Plaintiff in the above-entitled and numbered action, pro-se, and respectfully moves that this Honorable Court reconsider its Final Judgement on all issues entered on August 18, 1987.

AS REASONS THEREFORE, the Plaintiff, David Edward Martel, pro-se, respectfully submits the accompanying Affidavit of David Edward Martel in Support of Motion to Reconsider dated August 25, 1987 and the Memorandum of Law in Support of Objection to the Report, Recommendation, and Order of the Magistrate and in Support of the Motion to Overrule the Magistrate dated March 13, 1986 and a part of the record.

WHEREFORE, David Edward Martel, the Plaintiff, respectfully requests of this Honorable Court;

1) That this Honorable Court reconsider its final judgement on all issues entered on August 18, 1987;

2) That this Honorable Court state that the Plaintiff's Complaint and Jury Claim does state a cause of action under United States and New Hampshire law as to all counts and as to all defendants; and

3) That this Honorable Court grant such other and further relief as this Honorable Court deems just and proper.

Respectfully Submitted By,

Date:
August 25,(MR.) /s/ David E. Martel
1987 DAVID E. MARTEL, PRO-SE

World Federalist Party,
World Headquarters

179 Loudon Road,
Apartment One
Concord, New Hampshire
03301-6093

or: Post Office Box 2349
Concord, New Hampshire
03302-2349

Phone: No phone numbers
available

Certificate of Service

I hereby certify that I have this date forwarded a copy of this Motion to Reconsider to each of the following individuals either by mailing it to them first class mail, postage prepaid, or by hand delivering it to them:

1) The Honorable Stephen Everett Merrill;
2) Michael Lenehan, Esquire;
3) Diane L. Perin, Esquire;
4) Paul F. Cavanaugh, Esquire;
5) Charles T. Putnam, Esquire;
6) I. Michael Winograd, Esquire;
7) Paul F. Kfoury, Esquire;
8) Martin K. Glennon, Esquire;
9) Mr. Edward R. Strople;
10) Mrs. Jane V. Strople;
11) Theodore F. Wadleigh, Esquire; and
12) Merrick C. Weinstein, Esquire.

Date: /s/ David E. Martel
(Mr.) David E. Martel
August 25,
1987

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

DAVID EDWARD MARTEL, Plaintiff;	)	
v.	)	C-83-464-D
LIONEL J. TALBOT, ET AL., Defendants.	)	

AFFIDAVIT OF DAVID EDWARD MARTEL
IN SUPPORT OF MOTION TO RECONSIDER

STATE OF NEW HAMPSHIRE)
) SS.:
COUNTY OF MERRIMACK)

I, David E. Martel, 179 Loudon Road, Apartment One, Concord, Merrimack County, New Hampshire do hereby depose and say:

1) That I am the Plaintiff in the above-entitled and numbered action.

2) That on or about October 20, 1973 I made the statement that, "The President should be impeached!" which led to over seven million (7,000,000) cards, letters, telegrams, etc. demanding the impeachment of President Richard M. Nixon.

3) That that statement eventually led to the President's downfall.

4) That on or about February 6, 1975 I founded the World Federalist Party.

5) That on or about March 31, 1977 I established the World Federalist Party International Committee and Fund and have served as its Chairman and Treasurer since then.

6) That each and every one of the defendants mentioned in the above-entitled and numbered action have brought one or more of the enumerated charges against me.

7) That each and every one of the defendants mentioned are parties privy to persons, or the actual persons, who have

denied that I am well known and well known for political reasons.

8) That I was damaged in my lawful business and occupation as a political opponent of the government, establishment, and oligarchy and as Chairman and Treasurer of the World Federalist Party International Committee and Fund by those actions and those statements.

9) That I was otherwise damaged in my lawful business and occupation by those actions and those statements.

10) That in 1974 I was considered as a candidate for the United States Senate from New Hampshire by the powers that be here in New Hampshire.

11) That on or about July 27, 1981 about one week prior to my arrest I was threatened with assault by Glenn W. Schadlick in the presence of my mother and myself; Glenn Schadlick being one of the four persons who grabbed me on the night of my arrest, August 3, 1981.

12) That the above denials; the statements that I am NOT well known and that I am NOT well known for political reasons; are untrue and that this fact; that they are NOT true; has NOT been litigated before; that is, the fact that the statements are fraud and perjury.

13) That I am competent and knowledgeable to testify and to otherwise speak about the above facts and matters.

I, David Edward Martel, 179 Loudon Road, Apartment One, Concord, Merrimack County, New Hampshire, do hereby affirm and say that the above facts are true and correct to the best of my personal knowledge, information, and belief, under the pain and penalty of perjury, the punishment for which is a fine or imprisonment or both.

/s/ David E. Martel
(Mr.) David E. Martel

Subscribed and affirmed to before me this twenty-fifth day of August, A.D. 1987, in the City of Concord, County of Merrimack, State of New Hampshire.

/s/ Nancy H. Murphy
Nancy H. Murphy, Notary Public
My Commission Expires September 28, 1988

Certificate of Service

I hereby certify that I have this date forwarded a copy of this Affidavit of David Edward Martel in Support of Motion to Reconsider to each of the following individuals either by mailing it to them first class mail, postage prepaid, or by hand delivering it to them:

1) The Honorable Stephen Everett Merrill;
2) Michael Lenehan, Esquire;
3) Diane L. Perin, Esquire;
4) Paul F. Cavanaugh, Esquire;
5) Charles T. Putnam, Esquire;
6) I. Michael Winograd, Esquire;
7) Paul F. Kfoury, Esquire;
8) Martin K. Glennon, Esquire;
9) Mr. Edward R. Strople;
10) Mrs. Jane V. Strople;
11) Theodore F. Wadleigh, Esquire; and
12) Merrick C. Weinstein, Esquire.

/s/ David E. Martel
Date: August 25, 1987 (Mr.) David E. Martel